

REMARKS

Please reconsider the Application in view of the above amendments and the following remarks. Applicant thanks the Examiner for carefully considering this application. In the Office Action, the Examiner objected to the numbering of the claims as not in accordance with 37 C.F.R. §1.126. Next, the Examiner objected to the specification for inconsistent terminology. Next, the Examiner rejected claim 15 under 35 U.S.C. §112, first paragraph for failing to comply with the enablement requirement. Next, the Examiner rejected claims 1–7, 9, and 11–15 under 35 U.S.C. §102 as anticipated by U.S. Patent No. 6,637,706 (“Kim”). Finally, the Examiner rejected claims 1, 8, and 10 under 35 U.S.C. §102 as anticipated by U.S. Patent No. 5,845,940 (“Colburn”). In response, Applicant requests amendment of the Application as indicated by this paper and respectfully traverses.

Summary of Amendments

By this paper, Applicant respectfully requests claims 1 and 11 be amended. Particularly, claim 1 is amended to clarify that the rotation of the cradle between the retracted and extended positions is accomplished by simultaneously rotating outwardly and downwardly in relation to the vehicle in a single, uninterrupted stage. As such, the entire rotation between the retracted and extended positions must be a single uninterrupted stage such that a second end of the cradle traverses an uninterrupted arcuate path. Similarly, Applicant respectfully requests amendment of claim 11 to clarify that the means for supporting is maneuvered between the retracted and extended positions in a direction that is outward and downward in relation to the forklift truck such that the means for supporting traverses a single stage uninterrupted arcuate path.

Claim Numbering Objections

The Examiner indicated an objection to the claims as numbered in the submission accompanying a Request for Continued Examination submitted on May 15, 2006. In response, Applicant respectfully asserts the numbering of claims in that submission was correct. Particularly, the present application was originally filed with 21 claims on December 4, 2003. Pursuant to a restriction requirement mailed on May 6, 2005, Applicant elected apparatus claims 1–15, and canceled method claims 16–21 (later re-filed in a subsequent Divisional filing). Thus, the two new claims added in conjunction with the RCE were properly numbered as claims 22 and 23. Applicant respectfully apologizes for omitting the designation “16–21. (Canceled)” in the amendment accompanying the RCE, as its inclusion may have prevented confusion.

Examination of claims 22 and 23

In the Office Action, the Examiner asserted that newly added claims were directed to an invention independent or distinct from the invention already claimed. Particularly, the Examiner alleges that a gas spring containing a motion damper and a hydraulic device are separate inventions from a gas spring. Further, the Examiner requested the Applicant admit the devices to be “obvious permutations” of a gas spring to rejoin claims 22 and 23. Applicant respectfully notes for the record that the Examiner does not allege a lack of support in the application as filed for claims 22 and 23.

In response, Applicant respectfully notes that a gas spring containing a motion damper would be a sub-set (but not an obvious permutation) of a gas spring as formerly presented.

Therefore, the Examiner's prior search encompassing "gas springs" would assuredly include gas springs having motion dampers. Furthermore, Applicant respectfully notes that claim 22 including the gas spring comprising a motion damper properly depends from and is therefore narrower in scope than independent claim 1. Thus, on the basis of arguments presented below regarding patentability of claim 1, Applicant respectfully asserts that if claim 1 is allowable, claim 22 is allowable as well.

Regarding the "hydraulic device" of claim 23, the Applicant respectfully asserts that a hydraulic device as recited is not an obvious permutation of a gas spring as alleged. However, Applicant notes that claim 23 properly depends from and is therefore narrower in scope than claim 1. Thus, if claim 1 is allowable, claim 23 should be allowable as well. Furthermore, because claim 23 (and claim 22) were added in an amendment accompanying a Request for Continued Examination, any additional search required thereby should have been encompassed by said Request.

Objections to the Specification

In response to the Examiner's objection to the specification, Applicant respectfully asserts the specification contains an adequate written description of and enables the invention as claimed. As a first matter, Applicant respectfully asserts that one of ordinary skill in the art would understand the terms "motion dampener" and "motion damper," as used interchangeably in paragraph [0048], to be equivalent to the motion "dampener" claimed in claim 9 and the "means for damping" claimed in claim 15.

Referring to the second edition of the New Oxford American Dictionary, a damper is defined as “a device for reducing mechanical vibration, in particular a shock absorber on a motor vehicle.” Further, the same dictionary defines dampen, the root verb of the noun dampener, as “make less strong or intense” or to “reduce the amplitude of.” Therefore, in accordance with the New Oxford American Dictionary, the terms damper and dampener may interchangeably refer to a device to reduce the amplitude of or make mechanical movements less intense.

Finally, in the specification at paragraph [0048], the Applicant explicitly describes a motion dampener as a device that will “retard the speed at which the cradle moves to the extended position” and one that operates to “operates to slow free fall motion of the cradle.” Therefore, as used in the specification, a “dampener” as recited in claim 9 and a “means for damping” as recited in claim 15, distinctly point out and particularly claims a device that retards (*i.e.*, makes less strong or intense) the speed at which a cradle is moved in a “swing motion.” Thus, Applicant respectfully requests the Examiner withdraw the objection to the specification.

Rejection under §112

Regarding enablement under 35 U.S.C. §112, first paragraph, the Applicant respectfully traverses on the ground that the invention as claimed is described such that one of ordinary skill in the art would be able to make or use the invention without undue experimentation. Particularly, in response to the Examiner’s former drawing objection, Applicant submitted a set of replacement drawings including new Figure 8 containing a schematic representation of a damper 800 used in conjunction with a gas spring 418 between an anchor 422 and a pivot screw (420 of Figure 5) of a hinge 416. In support of Figure 8, paragraph [0048] of the specification as originally

filed explicitly recites that “[i]n some cases, a first end of the motion damper is connected to the anchor (422) disposed on the frame (406), and a second end of the motion damper is connected to the pivot screw (420).”

As such, Applicant respectfully asserts that this description is in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same. Therefore, Applicant respectfully asserts that one of ordinary skill in the art would understand and recognize numerous “means for dampening” that may be used in conjunction with the claimed subject matter. Particularly, one of ordinary skill in the art would recognize, without undue experimentation, that pneumatic shock absorbers (including hydraulic and gas springs), friction brakes, and various elastomeric devices may be used as a means for dampening the rotation of the means for supporting as claimed. Thus, Applicant respectfully requests the Examiner withdraw the rejection under 35 U.S.C. §112, first paragraph and allow claim 15 to issue.

Rejections under §102

With respect to the Examiner’s rejection, the Applicant requests independent claims 1 and 11 be amended as described above. As such, the Applicant respectfully traverses the Examiner’s rejection on the basis that neither the Kim reference nor the Colburn reference includes all the limitations as claimed. The Federal Circuit has held that “[a]nticipation under 35 U.S.C. § 102 means lack of novelty, and is a question of fact. To anticipate, *every* element and limitation of the claimed invention *must* be found in a *single* prior art reference, *arranged as in the claim.*”

Brown v. 3M, 265 F.3d 1349, 1351 (Fed. Cir. 2001) (emphasis added). Therefore, in order to properly reject claim 1 under 35 U.S.C. §102, either Kim or Colburn must include each and every element and limitation as arranged therein. Furthermore, in order to properly reject claim 11 under 35 U.S.C. §102, Kim must include each and every element and limitation as arranged therein.

Claims 1–10, 22, and 23

Particularly, with respect to claim 1 as amended, neither Kim nor Colburn discloses, suggests, or teaches a swing down tank bracket wherein after a latch is disengaged, a cradle is rotatable between a retracted position and an extended position by *simultaneously* rotating outwardly and downwardly in relation to the vehicle in a *single uninterrupted stage* such that a second end of the cradle traverses an uninterrupted arcuate path.

In contrast, Kim discloses a cradle that rotates 180° in a horizontal plane in a first step and then rotates 90° downward in a second step. Applicant respectfully asserts that one of ordinary skill in the art would recognize that the distinct, 180° horizontal and 90° vertical motions are not a single uninterrupted stage path as the two stage path of Kim is clearly interrupted. Further, neither step of Kim may constitute a simultaneous outward and downward rotation in relation to the vehicle as claimed. As claims 2–10, 22, and 23 properly depend from, and are narrower in scope than independent claim 1, they are also not properly anticipated by Kim under 35 U.S.C. §102 for at least the same reasons. Therefore, Applicant respectfully requests the Examiner remove the objection under 35 U.S.C. §102 and allow claims 1–10, 22, and 23 to issue.

In Colburn, the swinging arm cradle disclosed relies on a tilted pivoting pin connecting the cradle to the base plate for its swinging action. As described by Colburn in columns

5-6, the swing arm is pivotally attached to the tilted pivot pin, and thus moves first slightly up over the rear of the counterweight before moving down to the side of the forklift truck. Based on the drawings and detailed descriptions of Colburn, it is clear that the motion of the swing arm is completely dictated by the tilted pivot pin and there is only one possible trajectory for the swinging motion, i.e., the arm must move upwards first to a neutral position before descending to the lower portion of the arcing trajectory. (See column 6, line 63 to column 7, line 1).

In contrast, amended claim 1 recites a single-stage swing down tank bracket that rotates from the retracted position to the extended position by simultaneously rotating outwardly and downwardly *in one single uninterrupted stage*. It does not go through a slightly higher neutral position as required by the swinging arm of Colburn. For at least this reason, claim 1 is patentable over Colburn. Dependent claims 8 and 10 are also patentable over Colburn for at least the same reasons. Accordingly, withdrawal of this rejection is respectfully requested. As claims 2-10, 22, and 23 (including claims 8 and 10) properly depend from, and are narrower in scope than independent claim 1, they are also not properly anticipated by Colburn under 35 U.S.C. §102 for at least the same reasons. Therefore, Applicant respectfully requests the Examiner remove the objection to claims 1, 8, and 10 under 35 U.S.C. §102 and allow claims 1-10, 22, and 23 to issue.

Claims 11-15

Regarding claim 11 as amended, Kim does not disclose a swing down tank bracket comprising a means for supporting a fuel tank that is maneuvered between a retracted position and an extended position in a direction that is outward and downward in relation to the forklift truck such that the means for supporting traverses a *single stage uninterrupted* arcuate path. As

mentioned above in relation to claim 11, Kim merely discloses a cradle that rotates 180° in a horizontal plane in a first step and then rotates 90° downward in a second step. Applicant respectfully asserts that one of ordinary skill in the art would recognize that the distinct, 180° horizontal and 90° vertical motions are not a single stage uninterrupted arcuate path as the two stage path of Kim is clearly interrupted. Further, neither step of Kim alone constitutes an outward and downward rotation in relation to the forklift as claimed. As claims 12–15 properly depend from, and are narrower in scope than independent claim 11, they are also not properly anticipated by Kim under 35 U.S.C. §102 for at least the same reasons. Therefore, Applicant respectfully requests the Examiner remove the rejection under 35 U.S.C. §102 and allow claims 11–15 to issue.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 50-0591, under Order No. 06078/231001 from which the undersigned is authorized to draw. Applicant believes this reply is fully responsive to all outstanding issues and places this application in condition for allowance. If this belief is incorrect, or other issues arise, the Examiner is encouraged to contact the undersigned or his associates at the telephone number listed below.

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Respectfully submitted,

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